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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from New Zealand, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Letter dated 24 December 2001 from the Permanent Representative of New Zealand to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to enclose a report from New Zealand to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

My Government would, of course, be happy to provide the Committee with any further information as may be required or requested by the Committee.

(*Signed*) Don **MacKay**
Permanent Representative

Enclosure

Report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

New Zealand

Introduction

Security Council resolution 1373 (2001) of 28 September 2001 provides an important framework for the international response to the terrorist attacks. New Zealand is contributing to international efforts across the full range of diplomatic, legal, financial, humanitarian, intelligence and military activities. New Zealand is fully committed to cooperating with the United Nations, its Member States and particularly with the Counter-Terrorism Committee established by the Security Council pursuant to resolution 1373 (2001) to combat international terrorism.

Legislation

The Terrorism (Bombings and Financing) bill was introduced to the New Zealand Parliament in early 2001 for the purpose of implementing into New Zealand law the International Convention for the Suppression of Terrorist Bombings (the "Terrorist Bombings Convention") and the International Convention for the Suppression of the Financing of Terrorism (the "Terrorist Financing Convention"). Since September, amendments have been drafted to incorporate also the terrorist financing obligations in resolution 1373 (2001). These amendments rename the bill the "Terrorism Suppression bill", which the New Zealand Parliament intends to pass by April 2002. The text of the amendments can be found in the Foreign Affairs, Defence and Trade Select Committee's interim report on the bill, which is available on the Parliament internet site at www.clerk.parliament.govt.nz/content/91/fd121int.pdf.

At the time resolution 1373 (2001) was adopted, the Terrorism (Bombings and Financing) bill was in its final stages of the parliamentary select committee process. In New Zealand, most bills are referred to a select committee for consideration after their first reading. Such committees usually call for and hear public submissions on bills and can then recommend that amendments be made. In this case, the unusual step has been taken of adding a raft of substantive new provisions to the bill while it is before the Foreign Affairs, Defence and Trade Select Committee to implement the financing provisions of resolution 1373 (2001). The bill was considered to be an appropriate vehicle to make the necessary changes as it already deals with the obligations from the Terrorist Financing Convention. However, because the changes are so substantive, in effect doubling the size of the bill, the Committee decided to allow a further opportunity for public submissions. A large number of individuals and groups have made submissions, most of which suggest changes be made to the Bill. The Committee is due to report back to Parliament by 8 March 2002 and is likely to propose a number of amendments.

A second terrorism bill will be introduced to Parliament in early 2002 which will give effect to the remaining legislative obligations in resolution 1373 (2001). It

will add further provisions to the Terrorism Suppression Act and amend other New Zealand statutes such as the Crimes Act 1961 and the Immigration Act 1987.

In the interim, until the two terrorism bills have been passed, New Zealand has implemented many of its obligations under resolution 1373 (2001) by passing regulations under the United Nations Act 1946. These supplement existing regulations made under that Act that already provided for the freezing of some terrorist funds prior to resolution 1373 (2001) being passed.

New Zealand is currently a party to eight of the 12 international treaties related to counter-terrorism. It will shortly be in a position to become a party to the Terrorist Bombings and Financing Conventions and, in the second terrorism bill, will enact the necessary domestic legislation to enable it to become a party to the Convention on the Physical Protection of Nuclear Material and the Convention on the Marking of Plastic Explosives for the Purpose of Detection. This will complete New Zealand's adherence to all 12 treaties.

The Cabinet has recently authorized the ratification of the United Nations Convention against Transnational Organized Crime and its two Protocols against the Smuggling of Migrants and Trafficking in Persons. Ratification will take place once implementing legislation has been passed. New Zealand is currently working towards signature of the third Protocol relating to firearms.

Executive action

New Zealand has contributed military, intelligence and political support to the international fight against terrorism and has assisted on the humanitarian front. In New Zealand, an officials' group has been working under the leadership of the Department of the Prime Minister and Cabinet. Included are ad hoc working groups which have examined the existing measures available to New Zealand to combat terrorism and have determined where additional measures are needed to ensure New Zealand's overall contribution will be effective both in meeting our own security needs and in contributing effectively to international efforts.

Current arrangements for directing the national response in the event of a major crisis, emergency or security event have been reviewed and changes have been implemented or are under consideration to improve the effectiveness of whole-of-government decision-making processes and responses. Steps have been taken to strengthen New Zealand's protective security arrangements and other measures are under consideration. These include the physical security of high profile or significant facilities, aviation security and border control measures.

Consultation with other countries

On the global level, New Zealand has been participating in international cooperation against terrorism for many years, most importantly through the United Nations. New Zealand actively supports the development of global instruments on terrorism in the working group established for this purpose at the General Assembly. New Zealand is a party or is moving to become a party in the near future to all the global anti-terrorism treaties.

At the regional level, New Zealand is consulting with other countries, in particular Australia, in strengthening its ability to contribute to the campaign against

terrorism, internationally, regionally and bilaterally, including the response to resolution 1373 (2001).

New Zealand is working, together with regional organizations and other donors, to raise Pacific Island countries' awareness of the measures being taken by the international community to combat terrorism and their international obligations in this regard and has offered assistance with practical implementation of such measures. A number of Pacific Island countries have become the subject of international attention regarding financial issues. Four Pacific countries have been identified by the Financial Action Task Force on Money Laundering of the Organisation for Economic Cooperation and Development (OECD) as not conforming to international standards on anti-money laundering. Six Pacific jurisdictions have also been identified as meeting "tax haven" criteria under the OECD Harmful Tax Competition Initiative.

The international community has generally looked to countries such as Australia and New Zealand to work with Pacific Island countries in order to upgrade their systems so as to meet international requirements. New Zealand has been active in this regard along with OECD, the International Monetary Fund and the Asian Development Bank. New Zealand has communicated to Pacific Governments the special recommendations regarding terrorist financing arrived at during the recent Financial Action Task Force meeting. New Zealand has encouraged a regional response and offered assistance in support of this. Any assistance provided in this area would complement the existing support New Zealand is providing to help Pacific Island countries to upgrade their financial and regulatory systems, including funding a technical adviser in the establishment of financial intelligence units, stationed in the Cook Islands, and specialized advice provided by New Zealand agencies such as the Reserve Bank and the police.

Some Pacific Island countries have inadequate capacity for border control and for the control of passports and travel documents. The potential exists for these inadequacies to be exploited by terrorist groups. New Zealand is investigating ways to help manage these risks and to provide additional assistance to Pacific Island countries.

Operative paragraph 1

New Zealand will be in full compliance with the financing-related elements of resolution 1373 (2001) once the Terrorism Suppression bill is passed into law. In the interim, it has implemented its obligations by passing regulations under the United Nations Act. The United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 ("Terrorism Regulations") entered into force on 1 December 2001 and will expire on 30 June 2002, by which time the Terrorism Suppression bill will have become law.

The regulations create a number of offences which are described below. However, the maximum penalty available for offences created by regulations under the United Nations Act is one year imprisonment or a fine of $NZ 100,000. The Terrorism Suppression bill will create offences that have higher penalties. These are detailed below.

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

The Reserve Bank of New Zealand has written to financial institutions in New Zealand reminding them of their obligations under United Nations Act regulations. The text of the initial letter sent on 25 September 2001 is attached as an appendix to this report. Letters have also been sent to those institutions bringing to their attention executive orders issued by the United States of America. Copies of all the letters and notices can be found on the Bank's Internet site: www.rbnz.govt.nz/fxcontrols/unsanctions/index.

New Zealand is a member of the Financial Action Task Force on Money Laundering and actively supported the extension of its mandate to include the suppression of the financing of terrorism. Once the Terrorism Suppression bill has entered into force, New Zealand will be in compliance with most of the Special Recommendations on Terrorist Financing issued by the Task Force. New Zealand is also a member of the regional Financial Action Task Force-style body, the Asia/Pacific Group on Money Laundering.

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

Terrorism Regulations

The Terrorism Regulations make it an offence to provide or collect funds, directly or indirectly, wilfully and without lawful justification or reasonable excuse, intending that they be used, in full or in part, by an entity specified in the schedule to the Regulations. At present, the schedule lists the Taliban and associated entities, and Osama bin Laden and Al-Qaida associated entities designated by the Security Council Committee concerning Afghanistan (i.e. all those specified in the lists of 8 March, 8 October, 19 October, 9 November and 26 November 2001). If the United Nations issues new lists during the life of the Regulations they will be caught automatically. The Government can also extend the Regulations to individuals or entities not designated by the United Nations.

Terrorism Suppression bill

The Terrorism Suppression bill will criminalize the activities listed in subparagraph (b). Clause 9 of the bill creates a new offence of financing of terrorism. It provides that any person commits an offence who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects funds intending or knowing that they are to be used (or reckless as to whether they will be used), in full or in part, in order to carry out acts of a kind that, if they were carried out, would be terrorist acts. The offence is punishable by a maximum of 14 years imprisonment if the act is done knowingly, or by seven years imprisonment if the act is done recklessly. (Public submissions on the bill have, however, recommended changes to the offences, in particular, that the recklessness part of the offence be omitted.)

The bill, as introduced in early 2001, defined "terrorist act" in the same terms as the Terrorist Financing Convention. An expanded definition of "terrorist act" has been included in clause 5 of the bill, but is likely to change in some respects in

response to public submissions. The definition of "terrorist act" and the scope of activity that is potentially caught by it has been the subject of much public debate in New Zealand, with most public submissions on the bill concerned about perceived incompatibilities with human rights laws and civil liberties. Given the complexity of some of the issues that arise in defining terrorist acts, the New Zealand Government would welcome guidance from the Security Council on what conduct it aims to cover by the term "terrorist acts" in resolution 1373 (2001). In particular, it would assist the New Zealand Government to receive guidance on the extent to which it is necessary to go beyond the definition in the Terrorist Financing Convention, which defines "terrorist acts" in terms of offences under existing anti-terrorism treaties.

Clauses 13 and 15 of the bill assert extraterritorial jurisdiction over this offence to the extent required by the International Convention for the Suppression of the Financing of Terrorism. That is, New Zealand will have extraterritorial jurisdiction where the offence occurred outside New Zealand, but was done:

(i) By a New Zealand citizen;

(ii) By a stateless person who is ordinarily resident in New Zealand;

(iii) By any other person on board New Zealand ships or aircraft that are registered in New Zealand, required to be registered in New Zealand, or are part of the New Zealand Defence Force;

(iv) Where the offence resulted in a terrorist act in New Zealand, against a New Zealand citizen, against a New Zealand Government facility abroad or in order to compel the New Zealand Government to do or abstain from doing any act.

Clause 16 of the bill gives New Zealand jurisdiction where an offender is in New Zealand and not extradited.

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Terrorism Regulations

Until the Terrorism Suppression bill has been passed, the Government can freeze accounts and assets by regulations under the United Nations Act. The Terrorism Regulations create a prohibition on dealing with the property of entities specified in the schedule. The prohibition provides that no person in New Zealand and no New Zealand citizen outside New Zealand may, without lawful justification or reasonable excuse, deal with any property knowing that the property is:

(i) Owned or controlled, directly or indirectly, by an entity specified in the schedule; or

(ii) Derived from or generated from any property of the kind referred to in (i).

Failure to comply with the prohibition is an offence.

To date, no suspicious transactions or assets belonging to groups or individuals designated by the Security Council have been detected in New Zealand.

Terrorism Suppression bill

A new and more comprehensive regime has been created in the bill that allows the assets of those who commit terrorist acts, or who have associations with such people, to be frozen. The process takes into account that classified intelligence information, including that provided by other Governments, may have to be protected.

(i) The first stage is to identify the individuals or groups whose assets are to be frozen:

- The Prime Minister, after consultation with the Minister of Foreign Affairs and Trade, may make an interim designation if there is good cause to suspect that an organization or group has committed terrorist acts or is an associated entity;
- The Prime Minister can make a final designation if he or she has reasonable grounds to believe that an entity is a terrorist entity or associated entity. This designation expires after five years unless earlier confirmed by the High Court or revoked;
- The designated individual or entity can apply for a review at any time. This is done by the Inspector-General of Intelligence and Security (who will be an acting High Court judge);
- There is also an automatic review of the interim and final designations by the Inspector-General;
- There is a High Court review of the designation after five years, if it has not been done earlier. The Court must be satisfied on the balance of probabilities that that designation should continue;

(ii) The next stage is to identify any funds or property of the designated entity. There is an obligation to report suspicions to the police;

(iii) There is no court order as such to freeze property. Rather, a new offence has been created that makes it an offence for persons to deal, without lawful justification or reasonable excuse, with property:

- Knowing the property is owned or controlled by a person or group who is or could be designated as a terrorist entity or associated entity. The penalty will be a maximum of seven years imprisonment;
- Reckless as to whether it is owned or controlled by a designated entity. The penalty will be a maximum of five years imprisonment;

The Minister of Finance can authorize dealings with property or the provision of services in some circumstances (for example, to enable a third party with a valid interest in the property, or in the maintenance or disposition of it, to obtain relief);

(iv) Management and forfeiture of frozen property:

- The bill provides a link to the property management regime which is used for property frozen under restraining orders in the Proceeds of Crime Act 1992. (Some extra provisions will need to be added to the bill before it is passed to clarify how this is to work.),

- Frozen property can be forfeited at any time if the High Court makes an order on specified grounds. The main one is that the Court is satisfied on the balance of probabilities that the person or entity has carried out, or participated in carrying out, or facilitated, terrorist acts.

Changes to the process outlined above are possible following public submissions on the bill. In particular, many public submissions have called for offences only to apply to conduct that is done intentionally or knowingly, not to reckless conduct. Questions have been asked about the range of associated persons apparently caught by the resolution. There are, for example, concerns that, on a strict application, resolution 1373 (2001) would catch employees of legitimate businesses who could be said to act "at the direction" of the entity but may have no knowledge of its terrorist activities. Similarly, issues arise about the extent to which paragraphs 1 (c) and (d) of resolution 1373 (2001) allow exceptions, for instance, relating to the provision of funds to be used for humanitarian purposes. New Zealand would appreciate any guidance that the Counter-Terrorism Committee is able to give on these points.

Subparagraph (d) — What measures exist to prohibit the activities listed in this subparagraph?

Terrorism Regulations

The Terrorism Regulations prohibit persons in New Zealand and New Zealand citizens outside New Zealand from making available, or causing to be made available, directly or indirectly, without lawful justification or reasonable excuse, any property, or any financial or business or professional services, either to, or for the benefit of, an entity specified in the schedule.

Other United Nations regulations also prohibit the transfer of funds from New Zealand to Iraq or Libya. Details can be found on the Internet site of the Reserve Bank of New Zealand, as noted above.

Terrorism Suppression bill

In addition to the offence noted above under subparagraph 1 (c), it will also be an offence for persons to provide, without lawful justification or reasonable excuse, property, or financial, business or professional services to a person or group:

- Knowing the person or group is or could be designated as a terrorist entity or associated entity. The maximum penalty will be seven years imprisonment;
- Being reckless as to whether the property or services are provided to a designated entity. The maximum penalty will be five years imprisonment.

The Minister of Finance can authorize the provision of services or property in some circumstances (for example, to enable a third party with a valid interest in the property, or in the maintenance or disposition of it, to obtain relief). Because of the potential breadth of the prohibition, the bill provides that an example of a "lawful justification" is where the property the person made available is items of food, clothing or medicine, which amount to the necessaries of life. As noted above, New Zealand would appreciate any guidance that the Counter-Terrorism Committee is able to give on the intention regarding the scope of the definition of "financial assets" and "economic resources".

Operative paragraph 2

Subparagraph (a) — What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Recruitment to and participation in terrorist groups

The Terrorism Regulations include prohibitions on recruiting members into groups specified in the schedule and from participating in such groups. They provide that no person in New Zealand or New Zealand citizen outside New Zealand may recruit another person as a member of a group or organization knowing that the group or organization is a specified entity. The prohibition on participation provides that no person in New Zealand or New Zealand citizen outside New Zealand may participate in a group or organization, knowing that the group or organization is a specified entity.

The Terrorism Suppression bill contains similar prohibitions. Clause 10D provides that a person commits an offence who recruits another person as a member of a group or organization, knowing that the group or organization is:

(i) An entity that has been designated as a terrorist entity or associated entity; or

(ii) An entity that has carried out, or participated in the carrying out, of one or more terrorist acts.

The penalty for the offence is imprisonment for a term not exceeding 14 years.

Clause 10E provides that a person commits an offence who participates in a group or organization, knowing that the group or organization is:

(i) An entity that has been designated as a terrorist entity or associated entity; or

(ii) An entity that has carried out, or participated in the carrying out, of one or more terrorist acts.

The penalty for the offence is imprisonment for a term not exceeding 14 years.

Public submissions on the bill have raised concerns over the scope of the above-mentioned offences, in particular, whether they should be extended to include terrorist entities that have not been designated under the Act.

Supply of weapons to terrorists

New Zealand implements controls on the export of military weapons and dual use goods through the Customs Prohibition Order 1996 made under the Customs and Excise Act 1996. The export of listed goods is prohibited without the consent of the Secretary of Foreign Affairs and Trade. Export licensing decisions are made according to a set of criteria to ensure consistency with broader foreign, strategic and security policy objectives. A licence will not be granted if there is the potential for the goods to be used in any terrorist activity or if there is a significant risk of diversion. New Zealand's controls derive from relevant international disarmament and non-proliferation obligations and its participation in a number of informal

multilateral export control regimes to ensure that exports do not contribute to terrorist activity, in particular, to programmes of weapons of mass destruction.

New Zealand is also considering the resource and legislative implications of becoming a party to the Firearms Protocol to the United Nations Convention against Transnational Organized Crime, with a decision due to be taken by the Cabinet by 30 April 2002.

Subparagraph (b) — What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow exchange of information with other States?

Work is continuing on assessing New Zealand's international and domestic security environment. This includes the collection and evaluation of foreign and domestic intelligence and investigatory activities, with a particular focus on preventing New Zealand being used as a safe haven to plan and facilitate terrorist attacks.

As well as the bills relating specifically to terrorism noted above, Parliament is scheduled to pass in 2002 other legislation that will improve the capability of the police and the intelligence agencies to investigate groups or organizations of interest in respect of terrorist activities in New Zealand. The Crimes Amendment bill No. 6, which is currently before Parliament, will create new offences of unauthorized access to a computer system (hacking) and computer damage and make it an offence to intercept any form of private communication. At the same time, the bill provides some exemptions to the above offences for the police and the intelligence agencies to allow them to carry out their lawful functions. The Government Communications Security Bureau bill, also currently before Parliament, provides explicitly for the Bureau to pass on to the relevant law enforcement agencies any information relating to "serious crime" (which includes terrorism), while providing appropriate safeguards to protect the privacy of New Zealanders.

The Interception Capability bill, which is currently being drafted, will require all telecommunications network operators to make their networks interception capable and others, such as Internet service providers, to provide assistance to the police and the intelligence agencies, if called upon. The ability of the police and the intelligence agencies to monitor groups or organizations associated with terrorism will be particularly strengthened with the passage of this bill.

New Zealand contributes to international efforts to gather and analyse intelligence in support of counter-terrorism efforts. It has longstanding bilateral and multilateral relationships for sharing information and for cooperation with overseas countries and is taking steps to improve and strengthen those relationships.

Subparagraph (c) — What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

The Immigration Act 1987 prevents New Zealand from being used as a safe haven for terrorists. Section 7 of the Act provides that no entry permit my be granted to any person whom the Minister has reason to believe has engaged in terrorism or belongs to a terrorist organization, or whom the Minister has reason to

believe is likely to engage in, or facilitate the commission of, any act of terrorism. An exception may be granted only for the purpose of enabling that person to return to New Zealand to face any charge or to serve any sentence imposed on that person in New Zealand.

Section 73 of the Immigration Act 1987 allows the Minister of Immigration to order the deportation from New Zealand of any person where the Minister has reason to believe that the person has engaged in terrorist activity or is a member of a terrorist group, or that the person will, if permitted to stay in New Zealand, engage in or facilitate the commission of any act of terrorism. Section 75 of the Act also empowers the police to arrest, without a warrant, any person whom they believe on reasonable grounds to be a person to whom section 73 applies, in order to refer the case to the Minister for consideration as soon as possible.

In addition to the provisions of the Immigration Act, New Zealand has enacted the "extradite or prosecute" obligations for all terrorist offences that have been created to implement the anti-terrorism treaties to which New Zealand is a party.

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

New Zealand has created offences to implement the anti-terrorism treaties to which it is a party and has taken extraterritorial jurisdiction for those offences, allowing prosecution in New Zealand. The New Zealand Crimes Act 1961 extends culpability for criminal offences to those persons who aid any person to commit the offence, abet any person in the commission of the offence, or incite, counsel or procure any person to commit the offence. Section 66 of the Crimes Act provides that where two or more persons form a common intention to prosecute any unlawful purpose and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

As regards other criminal conduct outside the existing conventions, prosecutions may be possible in New Zealand. While the Crimes Act generally provides for jurisdiction to be territorial, it is sufficient to give jurisdiction if any act forming part of the offence or event necessary to its completion occurs in New Zealand.

There are also two general offences that could be used to prosecute a person in New Zealand for planning terrorism. Section 68 of the Crimes Act provides that everyone is liable to imprisonment for a term not exceeding 14 years who, in New Zealand, aids, incites, counsels, or procures the doing or omission of an act outside New Zealand which, if done or omitted in New Zealand, would be murder. Section 68 also provides for a sentence of not more than 10 years imprisonment where no such act is in fact done or omitted.

In addition, section 310 of the Crimes Act contains an offence of conspiracy to commit an offence. It provides that everyone who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omission in New Zealand would be an offence, is liable to imprisonment for a term not exceeding seven years.

The New Zealand Cabinet has also agreed that the second terrorism bill to be introduced to Parliament will include an offence of harbouring or concealing terrorists. It will be an offence to engage in any action designed to receive, support, or assist any person, either in the knowledge that they intend to engage in terrorist activity, or with the intent of enabling someone who has engaged in terrorist activity to escape after arrest or avoid arrest or conviction. The Cabinet also agrees that the maximum penalty for the offence should be seven years imprisonment.

Subparagraph (e) — What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

New Zealand has ratified eight of the 12 international treaties against terrorism, and has incorporated the terrorist acts defined in them as serious offences in domestic law. Examples include the Aviation Crimes Act 1972, the Maritime Crimes Act 1999 and the Crimes (Internationally Protected Persons, United Nations and Associated Personnel and Hostages) Act 1980. The penalties in the Aviation Crimes Act include life imprisonment for hijacking of aircraft and up to 14 years imprisonment for serious acts of violence on board aircraft or at international airports. Offences under the Maritime Crimes Act carry penalties of up to 14 years imprisonment, unless the offence is equivalent to murder or manslaughter, in which case life imprisonment applies. An example of the penalties in the Crimes (Internationally Protected Persons, United Nations and Associated Personnel and Hostages) Act is imprisonment for up to 14 years for the offence of hostage taking.

The Terrorism Suppression bill will implement the offences contained in the Terrorist Bombings and the Terrorist Financing Conventions. The New Zealand Cabinet has authorized New Zealand's accession to the remaining two anti-terrorism Conventions, the Convention on the Physical Protection of Nuclear Material and the Convention on the Marking of Plastic Explosives for the Purpose of Detection. The terrorist offences in those treaties will be included in the second terrorism bill to be introduced to Parliament next year. The penalties for offences in the Terrorism Suppression bill and other new offences are noted elsewhere in this report.

Aside from the specific offences created by the international anti-terrorism treaties, there is no general offence of "terrorist act" in the New Zealand Crimes Act. A whole range of terrorist acts, however, are covered by existing criminal offences. The Crimes Act, for example, was used to prosecute two of the agents responsible for the Rainbow Warrior bombing, the only terrorist attack to occur in New Zealand to date.

The New Zealand Cabinet has agreed that "terrorist activity" should be listed as an aggravating factor for the purposes of sentencing under the Sentencing and Parole Reform bill, which is currently before Parliament. That bill will also include "terrorist activity" in the list of factors justifying a minimum period of imprisonment of 17 years or more in murder cases. The Cabinet has also agreed that the second terrorism bill should extend extraterritorial jurisdiction to any offence committed by New Zealand citizens in the course of carrying out a terrorist act, as that term is defined in the Terrorism Suppression bill.

As already noted, the only convictions in New Zealand for terrorist activities related to the bombing of the Rainbow Warrior in Auckland harbour by French

agents on 10 July 1985. Two of those agents, Major Alain Mafart and Captain Dominique Prieur, were convicted of manslaughter of a crew member who died in the sinking and were sentenced to 10 years imprisonment. Following arbitration, the agents were deported to Hao atoll in French Polynesia pursuant to an agreement between France and New Zealand. They were both released and returned to France 18 months later. Subsequent arbitration found their release to be in violation of the agreement and the matter was resolved by the issuance of an apology and payment of compensation to New Zealand.

Subparagraph (f) — What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

The Mutual Assistance in Criminal Matters Act 1992 comprises a statutory regime for the giving and making of requests for certain types of assistance in criminal investigations and proceedings. The Act is wide in scope and applies equally to both Commonwealth and non-Commonwealth countries and to a broad range of offending, including all terrorist offences. A mutual assistance treaty is not needed under the Act before New Zealand can provide assistance. All the anti-terrorism treaties to which New Zealand is a party are listed in the schedule to the Act.

In addition to the formal mutual assistance regime, police to police assistance on criminal matters is regularly requested and provided through Interpol.

Similarly, New Zealand does not require a treaty in order to extradite persons to other countries. The Extradition Act 1999 allows requests to be granted on an ad hoc basis to countries with which New Zealand has no formal extradition relationship.

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc.?

The New Zealand Customs Service provides a set of integrated processes and linkages with other agencies that can be used to check and clear persons, goods and craft entering or exiting New Zealand. In response to resolution 1373 (2001), New Zealand has taken a number of specific measures to manage security risks at the border and is examining further strategies to tighten border security. This work was initiated following the terrorist attacks of 11 September 2001 in the United States and has been broadened to pick up the requirements of resolution 1373 (2001). Areas being developed are an updated assessment of strategic goods, including the movement of goods that could be used as the precursors for terrorist weaponry; the links between terrorism and transnational organized crime, including activities such as drug dealing, people smuggling, money laundering and firearms trafficking; the redevelopment of terrorist profiles and the updating of the alert system; and the use of biometric systems to improve detection of persons on international watch lists.

Confirmation of identity is fundamental to immigration and security checks. All applications for New Zealand travel documents are subject to careful screening, including checks against risk profiles. These procedures have been developed in conjunction with the border control and law enforcement agencies, including police,

Customs and Immigration. Applications for the grant of New Zealand citizenship are subject to a number of security checks, including individual police and New Zealand Security Intelligence Service reports.

New Zealand passports contain a range of security features to prevent counterfeiting, forgery and fraudulent use. These features are regularly reviewed in the light of international trends in identity crime and changing technology. The new passport introduced in 2000 contains sophisticated security features to prevent counterfeiting, forgery and fraudulent use.

The New Zealand Cabinet has agreed to amendments to the Passports Act 1992, along with other legislative changes required for implementation of the Protocol to the United Nations Convention against Transnational Organized Crime against the Smuggling of Migrants. As well as creating a new offence of people smuggling, it is proposed to introduce new offences covering the forgery and falsification of New Zealand travel documents, the distribution and disposal of false documents and fraud by officials. Extraterritorial jurisdiction is being sought for both existing and these new offences and the maximum penalties are to be increased to reflect the growing involvement of organized criminal groups in these offences and the seriousness of the associated criminal activities. The penalties will also be brought into line with those imposed by other countries.

While no immediate risk has been identified, a number of measures have been proposed that are aimed at keeping the immigration risk offshore, rather than having to manage it when it arises at the border or within New Zealand. These include systems to screen in advance of boarding the genesis of a passenger's travel and identity documentation, enhance the offshore interdiction programme, suspend some visa waiver programmes, extend the transit visa requirement on 1 January 2002 to nationals of all countries not subject to a visa waiver (except Australian visa holders) and amend the Immigration Act 1987 to allow information sharing with overseas government agencies to enhance measures such as identity and character checking. Miscellaneous legislative changes will be enacted to increase powers of search for immigration officers investigating immigration offences, including options for the simultaneous revocation of residence and citizenship in cases of fraudulent identity and the voiding of permits in cases of fraudulent identity.

Operative paragraph 3

Subparagraph (a) — What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Bilateral and multilateral relationships already exist for sharing information and cooperation with other countries. The New Zealand police have such relationships with Australia and other countries in the Asia-Pacific region and internationally through Interpol. The New Zealand Customs and Immigration Services have similar arrangements. All of these arrangements are regularly exercised in areas involving transnational organized crime and include cooperation in the area of terrorism.

Long-standing and well-developed relationships also exist for sharing information between security and intelligence agencies. These arrangements are both multilateral and bilateral with a number of other countries both regionally and worldwide.

New Zealand is reviewing some aspects of the Customs and Excise Act and the Immigration Act to enhance the exchange of information with overseas countries.

Subparagraph (b) — What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

Consultation with Australia is already under way to develop strategies relating to the broader political and strategic issues raised by the campaign against terrorism. They will also cover bilateral issues such as the movement of people, money and arms, domestic and aviation security and the range of other issues addressed by the United Nations. Channels for ongoing trans-Tasman cooperation on counter-terrorism have been consolidated. New Zealand is also in consultation with countries in the South Pacific on developments.

Subparagraph (c) — What steps have been taken to cooperate in the areas indicated in this subparagraph?

As noted above, a number of changes to New Zealand legislation are planned to enhance cooperation with other States parties. Existing mutual assistance and extradition laws are, however, already broad and are not premised on the existence of a treaty relationship before requests for assistance or extradition can be granted.

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

As already noted, New Zealand is party to most international conventions against terrorism and has incorporated the terrorist acts defined in them as serious offences in domestic law. The Terrorism Suppression bill will implement the offences contained in the Terrorist Bombings and the Terrorist Financing Conventions. The Government expects this bill to be passed by April 2002, at which point New Zealand will accede to the Terrorist Bombings Convention and ratify the Terrorist Financing Convention. The New Zealand Cabinet has authorized New Zealand's accession to the remaining two anti-terrorism conventions, the Convention on the Physical Protection of Nuclear Material and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, subject to the completion of domestic processes. The terrorist offences in those treaties will be included in the second terrorism bill to be introduced to Parliament early next year.

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

As already noted, all eight terrorism treaties to which New Zealand is a party have been fully implemented in domestic law with the terrorist acts defined in them being incorporated as serious criminal offences. New Zealand intends to complete its accession or ratification procedures for the remaining four treaties to which it is not yet a party in 2002.

All the anti-terrorism treaties to which New Zealand is a party are covered by the Mutual Assistance in Criminal Matters Act 1992 and the Extradition Act 1999.

Subparagraph (f) — What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

In New Zealand, permanent migration and temporary entry categories require full and verifiable documentation of identity. This is not the case with refugee status claims, where poor identity documentation is compatible with a genuine claim. Since 11 September 2001, New Zealand has introduced a number of strategic and operational responses to improve immigration risk management offshore, at the border and onshore. The New Zealand Immigration Service is developing a system to enhance the airlines' ability to conduct pre-boarding checks of passenger documentation and is investigating a system of instant fines on airlines that fail to meet their obligations under the Immigration Act 1987 as an aid to compliance. In addition, updated operational instructions have been issued to staff deciding whether to detain people who claim refugee status on arrival at the border where their identity cannot be determined. This has led to an increase in the frequency of immigration detention, with 6 per cent of total refugee status claimants detained since 19 September 2001. Measures to fingerprint onshore refugee status claimants to confirm identity, thereby enhancing security, are also to be introduced. Other initiatives include a more disciplined process for determining the identity of undocumented arrivals at the New Zealand border based on tighter criteria, improving access to overseas information needed to validate identity and changing the character and clearance procedures for some countries based on their risk profile.

Under the 1951 Refugee Convention, people who have committed crimes against humanity or peace are not eligible for asylum. New Zealand's determination process assesses refugee status claims against all relevant aspects of the Refugee Convention, including articles relating to exclusion from the protection of the Convention. In addition, the New Zealand Immigration Service carries out a series of checks to determine whether or not persons were known by the New Zealand authorities to be of questionable character or present a security risk.

Since 11 September 2001, New Zealand has introduced a number of responses to improve immigration risk management offshore, at the border and onshore. Updated operational instructions have been issued to staff deciding whether to detain people who claim refugee status on arrival at the border where their identity cannot be determined. In addition, the New Zealand Immigration Service is investigating other policy, legislative and operational measures for managing security and terrorism risks.

Subparagraph (g) — What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

The Immigration Act 1987 establishes processes where a person recognized as a refugee can be excluded from protection if the reasons for exclusion in the Refugee Convention were not properly assessed in the initial determination for any reason, including fraud, forgery, false or misleading representation or concealment of relevant information.

The Extradition Act 1999 does not allow New Zealand to extradite persons if the offence for which the surrender is sought is a political offence. While there is no definition of that term, the interpretation section of the Act provides that an offence of a political character does not include an offence that is constituted by conduct of a kind referred to in a multilateral treaty to which New Zealand is a party, or an offence for which parties have an obligation to extradite or prosecute. This provision would, therefore, prevent claims of political motivation being recognized as grounds for refusing extradition of alleged terrorists under the Extradition Act for offences within the scope of particular conventions.

Operative paragraph 4

New Zealand signed the United Nations Convention against Transnational Organized Crime and its Protocols against the Smuggling of Migrants and Trafficking in Persons in December 2000. The Cabinet has recently authorized ratification of the Convention and the two Protocols, subject to the passage of implementing legislation which will create a number of new offences that target activities of criminal groups generally. Those offences may also have an impact on the activities of terrorist groups and, in that way, help to cut off a source of terrorist funding. The implementing legislation, the Transnational Organized Crime Bill, is expected to be introduced to Parliament in early 2002 and passed before the end of the year.

Conclusion

New Zealand has contributed military, intelligence and political support to the international fight against terrorism and is continuing to assist on the humanitarian front. New Zealand is committed to meeting all of its obligations under resolution 1373 (2001) and has used existing legislative mechanisms to implement as much of the resolution as possible by 27 December 2001. Some of the obligations in the resolution, however, require legislative changes, which New Zealand is committed to passing as soon as possible in 2002 in order to achieve full compliance.

Appendix

25 September 2001

To: All financial institutions operating in New Zealand

United Nations sanctions regulations

1. It is the responsibility of the Reserve Bank of New Zealand to administer the financial aspects of the United Nations Sanctions Regulations in New Zealand.

2. As you will be aware, the Government has made regulations that prohibit economic contacts with particular States in order to uphold resolutions of the United Nations Security Council. Attached to this letter is an updated table to inform you of the current status of financial aspects of New Zealand's United Nations sanctions regulations. We remind you of the need for vigilance and caution in relation to any transactions that may potentially be subject to the prohibitions in the regulations.

3. In light of recent world events, I draw your attention to the financial regulations involving Afghanistan, which came into force on 16 March 2001. The effect of these regulations is included in the attached table.

4. Moreover, while we do not expect that there will be any known assets of terrorists held within New Zealand financial institutions, please ensure you notify the Reserve Bank if your institution becomes aware of any such assets.

5. Further, your vigilance may trigger you to suspect that a transaction is relevant to the investigation or prosecution of any person for money laundering or to the enforcement of the Proceeds of Crime Act 1991. I remind you that, in those circumstances, you must report your suspicion to the Financial Intelligence Unit within the New Zealand Police. In addition, in case you are not already aware, the Financial Action Task Force (FATF) has published a list of jurisdictions whose regulatory frameworks have been assessed as potentially facilitating money laundering. The FATF pronouncements on these "Non-Cooperative Countries and Territories" is available at www.oecd.org/fatf. The FATF recommends that financial institutions give special attention to business relations and transactions with persons from the non-cooperative countries and territories it lists, taking into account the particular weaknesses identified in the relevant FATF report. Giving special attention to transactions to or from such jurisdictions may also help your organization to minimize any risk of it breaching, inadvertently, the United Nations sanctions regulations.

6. We expect to include the updated table on the Reserve Bank web site in the near future. If you have any questions regarding the contents of, or your organization's obligations under, the regulations, please do not hesitate to contact Susan Ivory, Legal Analyst, on (04) 471 3713.

Yours sincerely,

Stephen Dawe
Legal Adviser
Reserve Bank of New Zealand